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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,277

10/31/2003

Bryn Hird

8473MR2

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

WEDDINGTON, KEVIN E

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

03/16/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/699,277	Applicant(s) HIRD ET AL.	
	Examiner KEVIN E. WEDDINGTON	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,8,9,23,25-27 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,8,9,23,25-27 and 29-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1, 6, 8, 9, 23, 25-27 and 29-38 are presented for examination.

Applicants' request for reconsideration filed January 13, 2011 has been received and entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 1, 6, 8 and 9 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Bailly et al. (6,030,953) in view of Park et al. (5,750,585), all of record, for reasons of record as set forth in the previous Office action dated September 21, 2010 at pages 3-4 as applied to claims 1, 6, 8 and 9.

Applicants' remarks regarding the prior art, Bailly et al. (6,030,953) in view of Park et al. (5,570,585) does not teach every limitation of the instant invention are not persuasive since Bailly et al. teach a composition comprising chitosan (one of applicants' HIPE foam) in combination with an inhibitor of gastrointestinal lapse (a lipase inhibitor). However, the Park et al. reference does teach one of applicants' polymeric material such as **polymethacrylates** (see column 4, lines 4-5).

The applicants can overcome this rejection by the deletion of the phrase "**polymethacrylates**" in claim 1.

The rejection made under 35 USC 103(a) is adhered to.

Claims 1, 6, 8 and 9 are not allowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 6, 8 and 9 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Daggy et al. (6,607,749 B1 with priority filing date of September 8, 1999) in view of Park et al. (5,750,585), all of record, for reasons of record as set forth in the previous Office action dated September 21, 2010 at pages 4-6 as applied to claim 1, 6, 8 and 9.

Applicants' remarks regarding the prior art, Daggy et al. (6,607,749 B1) in view of Park et al. (5,570,585) does not teach every limitation of the instant invention are not persuasive since Daggy et al. teach a composition comprising methylcellulose, a cellulose (one of applicants' HIPE foam) in combination with an inhibitor of gastrointestinal lapse (a lipase inhibitor) such as tetrahydrolipostatin. However, the

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Park et al. reference does teach one of applicants' polymeric material such as **polymethacrylates** (see column 4, lines 4-5).

The applicants can overcome this rejection by the deletion of the phrase "**polymethacrylates**" in claim 1.

The rejection made under 35 USC 103(a) is adhered to.

Claims 1, 6, 8 and 9 are not allowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 23 and 25-27 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Bailly et al. (6,030,953) or Daggy et al. (6,607,741 B1) in view of Park et al. (5,750,585) and further in view of Niazi (6,251,421), all of record, for reasons of record as set forth in the previous Office action dated September 21, 2010 at pages 6-7 as applied to claims 23 and 25-27.

Applicants' remarks regarding the prior art, Bailly et al. (6,030,953) or Daggy et al. (6,607,749 B1) in view of Park et al. (5,570,585) and further in view of Niazi (6,251,421) does not teach every limitation of the instant invention are not persuasive since Bailly et al. teach a composition comprising chitosan (one of applicants' HIPE foam) in combination with an inhibitor of gastrointestinal lapse (a lipase inhibitor) or Daggy et al. teach a composition comprising methylcellulose, a cellulose (one of applicants' HIPE foam) in combination with an inhibitor of gastrointestinal lapse (a lipase inhibitor) such as tetrahydrolipostatin. Niazi is cited to show that instant combination can be formulated into kits. However, the Park et al. reference does teach one of applicants' polymeric material such as **polymethacrylates** (see column 4, lines 4-5).

The applicants can overcome this rejection by the deletion of the phrase "**polymethacrylates**" in claims 23 and 27.

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Applicants may wish to amend claim 23, by the insertion of the phrase – inhibitor—after the word "lipase" in the (b) component.

The rejection made under 35 USC 103(a) is adhered to.

Claims 23 and 25-27 are not allowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 29-38 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Bailly et al. (6,030,953) or Daggy et al. (6,607,741 B1) in view of Park et al. (5,750,585) in view of Shiveley et al. (5,817,704) and further in view of Niazi (6,251,421), all of record, for reasons of record as set forth in the previous Office action dated September 21, 2010 at pages 7-9 as applied to claims 29-38.

Applicants' remarks regarding the prior art, Bailly et al. (6,030,953) or Daggy et al. (6,607,749 B1) in view of Park et al. (5,570,585) in view of Shiveley et al. (5,817,704) and further in view of Niazi (6,251,421) does not teach every limitation of the instant invention are not persuasive since Bailly et al. teach a composition comprising chitosan (one of applicants' HIPE foam) in combination with an inhibitor of gastrointestinal lapse (a lipase inhibitor) or Daggy et al. teach a composition comprising methylcellulose, a cellulose (one of applicants' HIPE foam) in combination with an inhibitor of gastrointestinal lapse (a lipase inhibitor) such as tetrahydrolipostatin. Niazi is cited to show that instant combination can be formulated into kits. However, the Park et al. reference does teach one of applicants' polymeric material such as **polymethacrylates** (see column 4, lines 4-5).

The applicants can overcome this rejection by the deletion of the phrase "**polymethacrylates**" in claims 29, 33 and 36.

The rejection made under 35 USC 103(a) is adhered to.

Claims 29-38 are not allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN E. WEDDINGTON whose telephone number is (571)272-0587. The examiner can normally be reached on 12:00 pm -8:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KEVIN E WEDDINGTON
Primary Examiner
Art Unit 1614

/KEVIN E WEDDINGTON/
Primary Examiner, Art Unit 1614